

09/345,092



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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09/345,092	06/30/1999	JAY S. WALKER	WD2-98-119	9809

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EXAMINER

YOUNG, JOHN L

ART UNIT	PAPER NUMBER
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2162

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/345,092

Applicant(s)
Walker et al.

Examiner
John Young

Art Unit
2162



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 24, 2001
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 10
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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FINAL REJECTION

DRAWINGS

1. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

This application has been filed with drawings that have been approved by the official draftsman, and said drawings are acceptable for examination and publication purposes.

CLAIM REJECTIONS — 35 U.S.C. §112 ¶2

2. **Rejections Withdrawn.**

ORIGINAL CLAIM REJECTIONS

CLAIM REJECTIONS — 35 U.S.C. §103(a)

The following are quotations of 35 U.S.C. §103 (a) which form the basis of the obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Independent claims 1, 36 & 40 and dependent claims 2-35, 37-39 & 41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Malaspina, US 5,544,784 (8/13/1996) (herein referred to as "Malaspina") in view of Bernard et al., US 5,918,213 (6/29/1999) (herein referred to as "Bernard").

As per claim 1, Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "A method of automatically dispensing a product to a customer, comprising the steps of . . . receiving a product selection from the customer . . . determining whether said product selection qualifies for an alternate product offer . . . presenting an alternate product offer message if said product selection so qualifies . . . determining if the customer has accepted said alternate product offer; and . . . dispensing a first product that corresponds to said alternate product offer if the customer has so accepted, or . . . dispensing a second product that corresponds to said product selection if the customer has not so accepted."

Malaspina does not explicitly show: "dispensing a second product that corresponds to said product selection if the customer has not so accepted. . . ." even though Malaspina suggests same.

Bernard (FIG. 24; FIG. 25; and FIG. 44) shows elements that suggest: "dispensing a second product that corresponds to said product selection if the customer has not so accepted. . . ."

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Bernard proposes optional product dispensing modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of "*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*" (See Bernard (col. 4, ll. 32-34)).

As per claim 2, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest:

"determining that said product selection does not qualify for an alternate product offer . . . determining . . . whether said product selection qualifies for an alternate product offer."

Malaspina lacks explicit mention of "a database is provided . . . containing at least one decision rule, and step (b) includes the steps of . . . determining if any decision rule in said database is associated with said product selection . . . if no decision rule in said database is associated with said product selection, then, determining that said product selection does not qualify for an alternate product offer . . . if at least one decision rule in said database is associated with said product selection, the choosing one-of-said at least

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one associated decision rule, and, determining from said chosen decision rule whether said product selection qualifies for an alternate product offer.”

Bernard (FIG. 1; FIG. 4; FIG. 6; FIG. 17; FIG. 19; FIG. 20A; FIG. 22; FIG. 23; FIG. 24; FIG. 25; FIG. 28; FIG. 29; FIG. 36; FIG. 41; and FIG. 44) shows elements that suggest: “determining that said product selection does not qualify for an alternate product offer . . . determining . . . whether said product selection qualifies for an alternate product offer.”

Bernard proposes database and decision rule modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of “*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*” (See Bernard (col. 4, ll. 32-34)).

As per claim 3, Malaspina in view of Bernard shows the method of claim 2. (See the rejection of claim 2 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “wherein a plurality of decision rules . . . are identified . . . as being associated with said product

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selection, and wherein the step of choosing comprises . . . choosing one of said plurality of decision rules according to a predetermined rule selection hierarchy.”

Malaspina lacks explicit mention of “a database. . . .” even though Malaspina suggests same.

Bernard (FIG. 1; FIG. 4; FIG. 6; FIG. 17; FIG. 19; FIG. 20A; FIG. 22; FIG. 23; FIG. 24; FIG. 25; FIG. 28; FIG. 29; FIG. 36; FIG. 41; and FIG. 44) shows elements that suggest: “a database. . . .”

Bernard proposes database and decision rule modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of “*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*” (See Bernard (col. 4, ll. 32-34)).

As per claim 4, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “choosing an alternate product. . . .”

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Malaspina lacks explicit mention of: “determining an acceptance rate of said chosen alternate product in relation to said product selection, and . . . determining whether said product selection qualifies for an alternate product offer based on said acceptance rate.”

“Official Notice” is taken that both the concept and the advantages of “determining an acceptance rate of said chosen alternate product in relation to said product selection, and . . . determining whether said product selection qualifies for an alternate product offer based on said acceptance rate. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations (for example, as in targeting Internet advertisements and incentives to consumers) were well known in the art.

As per claim 5, Malaspina in view of Bernard shows the method of claim 4.

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest:

“determining that said product selection qualifies for an alternate product offer. . . .”

Malaspina lacks explicit mention of: “determining that said product selection qualifies for an alternate product offer if said acceptance rate is greater than a predetermined value.”

“Official Notice” is taken that both the concept and the advantages of “determining that said product selection qualifies for an alternate product offer if said

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acceptance rate is greater than a predetermined value. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations (for example, as in targeting Internet advertisements and incentives to consumers) were well known in the art.

As per claim 6, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “there is at least one product item associated with said product selection . . . choosing an alternate product having at least one product item associated therewith . . . determining that said product selection qualifies for an alternate product offer. . . .”

Malaspina lacks explicit mention of: “an expiration date. . . .” even though Malaspina suggests same.

“Official Notice” is taken that both the concept and the advantages of “wherein there is at least one product item associated with said product selection and each of said at least one product item has an expiration date associated therewith, and wherein step (b) includes the steps of . . . choosing an alternate product having at least one product item associated therewith . . . determining an expiration date for a predetermined one of said at least one product item associated with said alternate product, and . . . determining that said product selection qualifies for an alternate product offer if said determined expiration

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date of the predetermined alternate product item is a later date than said expiration date of the predetermined alternate product item. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations (for example, as in batteries having expiration dates) were well known in the art.

As per claim 7, Malaspina in view of Bernard shows the method of claim 6. (See the rejection of claim 6 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “said predetermined one of said at least one product item associated with said alternate product is a next vendible product item.”

Malaspina lacks explicit mention of: “said alternate product. . . .” even though Malaspina suggests same.

It would have been obvious to one of ordinary skill in the art at the time of the invention that if “a similar battery is requested, then one is located . . . and dispensed. . . .” would have been selected in accordance with “said alternate product. . . .” because such alternatives would have provided customers with price and performance options.

As per claim 8, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

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Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "choosing an alternate product having at least one product item associated therewith. . . ."

Malaspina lacks explicit mention of: "an expiration date. . . ." even though Malaspina suggests same.

"Official Notice" is taken that both the concept and the advantages of "each of said at least one product item having an expiration date associated therewith . . . determining an item expiration date for a predetermined one of said at least one product item associated with said alternate product, and . . . using said item expiration date to determine whether said product selection qualifies for an alternate product offer. . . ." were expected in the art by one of ordinary skill at the time of the invention because such determinations (for example, as in batteries having expiration dates) were well known in the art.

As per claim 9, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "at least one product item associated with said product selection. . . ."

Malaspina lacks explicit mention of: "an expiration date. . . ." even though Malaspina suggests same.

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“Official Notice” is taken that both the concept and the advantages of “determining an item expiration date for a predetermined one of said at least one product item associated with said product selection, and . . . using said item expiration date to determine whether said product selection qualifies for an alternate product offer. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations (for example, as in batteries having expiration dates) were well known in the art.

As per claim 10, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (col. 1, ll. 55-60; FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “wherein there is a profit margin associated with said product selection, and wherein step (b) includes the steps of . . . choosing an alternate product . . . obtaining a profit margin associated with said alternate product. . . .”

Malaspina lacks explicit mention of: “determining that said product selection qualifies for an alternate product offer if said alternate product profit margin is greater than said profit margin associated with said product selection.”

“Official Notice” is taken that both the concept and the advantages of “determining that said product selection qualifies for an alternate product offer if said alternate product profit margin is greater than said profit margin associated with said

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product selection. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations were well known in the art.

As per claim 11, Malaspina in view of Bernard shows the method of claim 10.

(See the rejection of claim 10 supra).

Malaspina (col. 1, ll. 55-60; FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “wherein there is at least one product item associated with said chosen alternate product. . . .”

Malaspina lacks explicit mention of: “an expiration date. . . .” even though Malaspina suggests same.

“Official Notice” is taken that both the concept and the advantages of “wherein each of said at least one product item associated with said chosen alternate product has an expiration date. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations (for example, as in batteries having expiration dates) were well known in the art.

Malaspina lacks explicit mention of: “wherein said profit margin associated with said alternate product is chosen to be a function of said expiration date.”

“Official Notice” is taken that both the concept and the advantages of “wherein said profit margin associated with said alternate product is chosen to be a function of said

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expiration date. . . .” were expected in the art by one of ordinary skill at the time of the invention because such choices were well known in the art.

As per claim 12, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “selecting an alternate product . . . determining an available quantity of vendible product items associated with said product selection. . . .”

Malaspina lacks explicit mention of: “using said available quantity of vendible product items associated with said product selection to determine whether said product selection qualifies for an alternate product offer.”

“Official Notice” is taken that both the concept and the advantages of “using said available quantity of vendible product items associated with said product selection to determine whether said product selection qualifies for an alternate product offer. . . .” were expected in the art by one of ordinary skill at the time of the invention because such choices were well known in the art.

As per claim 13, Malaspina in view of Bernard shows the method of claim 12. (See the rejection of claim 12 supra).

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Malaspina lacks explicit mention of "a database is provided . . . containing a t count of vendible items associated with at least said product selection and wherein step (b2) includes . . . determining from said database an available quantity of vendible items associated with said product selection."

Bernard (FIG. 1; FIG. 4; FIG. 6; FIG. 17; FIG. 19; FIG. 20A; FIG. 22; FIG. 23; FIG. 24; FIG. 25; FIG. 28; FIG. 29; FIG. 36; FIG. 41; and FIG. 44) shows elements that suggest: "a database is provided . . . containing a t count of vendible items associated with at least said product selection and wherein step (b2) includes . . . determining from said database an available quantity of vendible items associated with said product selection."

Bernard proposes database and decision rule modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of "*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*" (See Bernard (col. 4, ll. 32-34)).

As per claim 14, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

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Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "selecting an alternate product . . . determining an available quantity of vendible product items associated with said product selection. . . ."

Malaspina lacks explicit mention of: "using said available quantity of vendible product items associated with said alternate product to determine whether said product selection qualifies for an alternate product offer."

"Official Notice" is taken that both the concept and the advantages of "using said available quantity of vendible product items associated with said alternate product to determine whether said product selection qualifies for an alternate product offer. . . ." were expected in the art by one of ordinary skill at the time of the invention because such choices were well known in the art.

As per claim 15, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "choosing an alternate product. . . ."

Malaspina lacks explicit mention of: "determining a demand rate for said product selection . . . determining a demand rate for said alternate product . . . comparing said demand rate for said product selection and said demand rate for said alternate product,

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and . . . determining based on said step of comparing whether said product selection qualifies for an alternate product offer.”

“Official Notice” is taken that both the concept and the advantages of “determining a demand rate for said product selection . . . determining a demand rate for said alternate product . . . comparing said demand rate for said product selection and said demand rate for said alternate product, and . . . determining based on said step of comparing whether said product selection qualifies for an alternate product offer. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations were notoriously well known in the art.

As per claim 16, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “selecting an alternate product. . . .”

Malaspina lacks explicit mention of: “determining a demand rate for said product selection . . . comparing said demand rate for with a predetermined rate, and . . . determining based on said step of comparing whether said product selection qualifies for an alternate product offer.”

“Official Notice” is taken that both the concept and the advantages of “determining a demand rate for said product selection . . . comparing said demand rate for

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with a predetermined rate, and . . . determining based on said step of comparing whether said product selection qualifies for an alternate product offer. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations were notoriously well known in the art.

As per claim 17, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “selecting an alternate product, said alternate product having at least one product item associated therewith. . . .”

Malaspina lacks explicit mention of: “determining a number of days until expiration for a predetermined one of said at least one product item associated with said alternate product . . . comparing said number of days until expiration with a predetermined number of days, and . . . determining based on said step of comparing whether said product selection qualifies for an alternate product offer.”

“Official Notice” is taken that both the concept and the advantages of “determining a number of days until expiration for a predetermined one of said at least one product item associated with said alternate product. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations (for example, as in batteries having expiration dates) were well known in the art.

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Malaspina lacks explicit mention of: “comparing said number of days until expiration with a predetermined number of days, and . . . determining based on said step of comparing whether said product selection qualifies for an alternate product offer.”

“Official Notice” is taken that both the concept and the advantages of “comparing said number of days until expiration with a predetermined number of days, and . . . determining based on said step of comparing whether said product selection qualifies for an alternate product offer. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations were well known in the art.

As per claim 18, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “wherein said alternate product offer message includes an offer of an incentive for the customer to purchase another item.

Malaspina does not explicitly recite: “wherein said alternate product offer message includes an offer of an incentive for the customer to purchase another item.”

“Official Notice” is taken that both the concept and the advantages of “said alternate product offer message includes an offer of an incentive for the customer to purchase another item. . . .” were expected in the art by one of ordinary skill at the time of the invention because such incentives were well known in the art.

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As per claim 19, Malaspina in view of Bernard shows the method of claim 18.

(See the rejection of claim 18 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "said offer of an incentive is an offer of a future incentive."

Malaspina does not explicitly recite: "said offer of an incentive is an offer of a future incentive."

"Official Notice" is taken that both the concept and the advantages of "said offer of an incentive is an offer of a future incentive. . . ." were expected in the art by one of ordinary skill at the time of the invention because such incentives were well known in the art.

As per claim 20, Malaspina in view of Bernard shows the method of claim 18.

(See the rejection of claim 18 supra).

Malaspina does not explicitly recite: "said offer of an incentive is accompanied by a presentation of a coupon code representative of said offer of an incentive."

"Official Notice" is taken that both the concept and the advantages of "said offer of an incentive is accompanied by a presentation of a coupon code representative of said offer of an incentive. . . ." were expected in the art by one of ordinary skill at the time of the invention because such offers of incentive were well known in the art.

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As per claim 21, Malaspina in view of Bernard shows the method of claim 20.

(See the rejection of claim 20 supra).

Malaspina does not explicitly recite: "said coupon code comprises a character sequence."

"Official Notice" is taken that both the concept and the advantages of "said coupon code comprises a character sequence. . . ." were expected in the art by one of ordinary skill at the time of the invention because such character sequences were well known in the art.

As per claim 22, Malaspina in view of Bernard shows the method of claim 21.

(See the rejection of claim 21 supra).

Malaspina does not explicitly recite: "said coupon code comprises a character sequence."

"Official Notice" is taken that both the concept and the advantages of "said coupon code comprises a character sequence. . . ." were expected in the art by one of ordinary skill at the time of the invention because such character sequences were well known in the art.

As per claim 23, Malaspina in view of Bernard shows the method of claim 18.

(See the rejection of claim 18 supra).

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Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "said another item is a product item associated with said alternate product offer."

Malaspina does not explicitly recite: "said another item is a product item associated with said alternate product offer."

It would have been obvious to one of ordinary skill in the art at the time of the invention that the disclosure of Malaspina would have been selected in accordance with "said another item is a product item associated with said alternate product offer. . . ." because such an alternative would have provided customers with price and performance options.

As per claim 24, Malaspina in view of Bernard shows the method of claim 18. (See the rejection of claim 18 supra).

Malaspina lacks explicit mention of: "said offer of an incentive is an offer of a discount in price."

"Official Notice" is taken that both the concept and the advantages of an "offer of an incentive is an offer of a discount in price. . . ." were expected in the art by one of ordinary skill at the time of the invention because such marketing incentives were well known in the art.

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As per claim 25, Malaspina in view of Bernard shows the method of claim 24.

(See the rejection of claim 24 supra).

Malaspina lacks explicit mention of: “said offer of a discount is an offer of a present discount.”

“Official Notice” is taken that both the concept and the advantages of an “offer of a discount is an offer of a present discount. . . .” were expected in the art by one of ordinary skill at the time of the invention because such marketing incentives were well known in the art.

As per claim 26, Malaspina in view of Bernard shows the method of claim 24.

(See the rejection of claim 24 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest an: “alternate product offer.”

Malaspina lacks explicit mention of an: “offer of a discount in price includes an offer of a discount for an item corresponding to said alternate product offer.”

“Official Notice” is taken that both the concept and the advantages of an “offer of a discount in price includes an offer of a discount for an item corresponding to said alternate product offer. . . .” were expected in the art by one of ordinary skill at the time of the invention because such marketing incentives were well known in the art.

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As per claim 27, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest an: “alternate product offer message. . . .”

Malaspina lacks explicit mention of: “a plurality of different alternate products.”

Bernard (col. 4, ll. 32-34; FIG. 17; FIG. 19; FIG. 20A; FIG. 22; FIG. 23; FIG. 24; FIG. 25; FIG. 28; FIG. 29; and FIG. 36) shows elements that suggest: “wherein said alternate product offer message includes an offer of a plurality of different alternate products.”

Bernard proposes plural alternate product modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of “browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.” (See Bernard (col. 4, ll. 32-34)).

As per claim 28, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest:

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“determining whether said product selection qualifies for a further alternate product offer . . . presenting a further alternate product offer message if said product selection so qualifies . . . determining if the customer has accepted said further alternate product offer . . . dispensing a third product that corresponds to said further alternate product offer if the customer has so accepted, and . . . dispensing a second product that corresponds to said product selection if the customer has not so accepted.”

Malaspina does not explicitly show an: “dispensing a third product that corresponds to said further alternate product offer if the customer has so accepted, and . . . dispensing a second product that corresponds to said product selection if the customer has not so accepted. . . .” even though Malaspina suggests same.

Bernard (FIG. 24; FIG. 25; and FIG. 44) shows elements that suggest: dispensing a third product that corresponds to said further alternate product offer if the customer has so accepted, and . . . dispensing a second product that corresponds to said product selection if the customer has not so accepted. . . .”

Bernard proposes additional optional product dispensing modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of “*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*” (See Bernard (col. 4, ll. 32-34)).

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As per claim 29, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina (FIG. 1 and FIG. 4) discloses a "CUSTOMER INTERFACE" (FIG. 1, el. 12) and "COIN SLOT"; "BILL SLOT"; "BILL COUNTER"; and "CHANGE ACTUATOR" (FIG. 4).

Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: "receiving an amount of money from the customer."

Malaspina does not explicitly recite: "receiving an amount of money from the customer. . . ." even though Malaspina suggests same.

It would have been obvious to one of ordinary skill in the art at the time of the invention that the disclosures of Malaspina cited above would have been selected in accordance with "receiving an amount of money from the customer. . . ." because such means for "receiving money from the customer. . . ." were well known in the art.

As per claim 30, Malaspina in view of Bernard shows the method of claim 29. (See the rejection of claim 29 supra).

Malaspina (FIG. 1 and FIG. 4) discloses a "CUSTOMER INTERFACE" (FIG. 1, el. 12) and "COIN SLOT"; "BILL SLOT"; "BILL COUNTER"; and "CHANGE ACTUATOR" (FIG. 4).

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Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 4; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “said amount of money is greater than a price of said product selection and wherein said alternate product offer message includes an offer to purchase an alternate product having a higher price than said price of said product selection.”

Malaspina does not explicitly recite: “said amount of money is greater than a price of said product selection and wherein said alternate product offer message includes an offer to purchase an alternate product having a higher price than said price of said product selection. . . .” even though Malaspina suggests same.

It would have been obvious to one of ordinary skill in the art at the time of the invention that the disclosures of Malaspina cited above would have been selected in accordance with “said amount of money is greater than a price of said product selection and wherein said alternate product offer message includes an offer to purchase an alternate product having a higher price than said price of said product selection. . . .” because such selection would have provided means for receiving a greater amount of money than a price of a product selection. And such means were well known in the art at the time of the invention.

As per claim 31, Malaspina in view of Bernard shows the method of claim 30, (See the rejection of claim 30 supra).

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Malaspina does not explicitly recite: “said offer to purchase said alternate product includes an offer to purchase said alternate product at a special price approximately equal to said amount of money received from the customer.”

“Official Notice” is taken that both the concept and the advantages of “said offer to purchase said alternate product includes an offer to purchase said alternate product at a special price approximately equal to said amount of money received from the customer. . . .” were expected in the art by one of ordinary skill at the time of the invention because such bargaining incentives were well known in the art.

As per claim 32, Malaspina in view of Bernard shows the method of claim 31. (See the rejection of claim 31 supra).

Malaspina does not explicitly recite: “said special price is a discounted price.”

“Official Notice” is taken that both the concept and the advantages of “said special price is a discounted price. . . .” were expected in the art by one of ordinary skill at the time of the invention because such bargaining incentives were well known in the art.

As per claim 33, Malaspina in view of Bernard shows the method of claim 1. (See the rejection of claim 1 supra).

Malaspina lacks explicit mention of: “selecting a plurality of products. . . .”

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Bernard (col. 4, ll. 32-34; FIG. 17; FIG. 19; FIG. 20A; FIG. 22; FIG. 23; FIG. 24; FIG. 25; FIG. 28; FIG. 29; and FIG. 36) shows elements that suggest: “selecting a plurality of products. . . .”

Bernard proposes plural product selection modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of “*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*” (See Bernard (col. 4, ll. 32-34)).

Malaspina (col. 1, ll. 55-60; FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “a profit margin associated. . . .” with the products.

Malaspina lacks explicit mention of: “selecting a plurality of products, each of said plurality of products having a profit margin associated therewith . . . determining which of said associated profit margins is a largest profit margin . . . identifying which of said plurality of products is associated with said largest profit margin . . . selecting for presentation in an alternate product offer message any product so identified, and . . . presenting said alternate product offer message if said product selection so qualifies. . . .” even though Malaspina suggests same.

“Official Notice” is taken that both the concept and the advantages of “selecting a plurality of products, each of said plurality of products having a profit margin associated

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therewith . . . determining which of said associated profit margins is a largest profit margin . . . identifying which of said plurality of products is associated with said largest profit margin . . . selecting for presentation in an alternate product offer message any product so identified, and . . . presenting said alternate product offer message if said product selection so qualifies. . . .” were expected in the art by one of ordinary skill at the time of the invention because such determinations were well known in the art.

Claim 34 is rejected for substantially the same reasons as claim 1.

Claim 35 is rejected for substantially the same reasons as claim 34; furthermore, the devices selected in claim 35 were well known in the art at the time of the invention.

Claim 36 is rejected for substantially the same reasons as claim 1.

Claim 37 is rejected for substantially the same reasons as claim 2.

Claim 38 is rejected for substantially the same reasons as claim 36.

Claim 39 is rejected for substantially the same reasons as claim 38 furthermore, the devices selected in claim 39 were well known in the art at the time of the invention.

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Claim 40 is rejected for substantially the same reasons as claim 1.

Claim 41 is rejected for substantially the same reasons as claim 40; furthermore,

“Official Notice” is taken that both the concept and the advantages of using “a microprocessor controlling the distribution of said plurality of product types by said vending machine . . . being in electrical communication with said input device, and, being responsive to said input device; and . . . a message output device responsive to said microprocessor, said message output device for presenting said alternate product offer message to customer[sic]. . . .” were expected in the art at by one of ordinary skill at the time of the invention because such applications were well known in the art.

Claim 42 is rejected for substantially the same reasons as claim 41; furthermore,

the devices selected in claim 42 were well known in the art at the time of the invention.

CLAIM REJECTIONS — 35 U.S.C. §103(a)

4. Independent claims 43 & 44 are rejected under 35 U.S.C. §103(a) as being unpatentable over Malaspina, US 5,544,784 (8/13/1996) (herein referred to as “Malaspina”) in view of Bernard et al., US 5,918,213 (6/29/1999) (herein referred to as “Bernard”).

As per claim 43, Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “A method comprising: receiving a selection of a first product from a vending

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machine; presenting an offer for a second product in lieu of the first product, in which the second product is more profitable than the first product; determining if the customer has accepted the offer; and dispensing the second product if the customer has accepted the offer.”

Malaspina does not explicitly show: “dispensing the second product if the customer has accepted the offer. . . .” even though Malaspina suggests same.

Bernard (FIG. 24; FIG. 25; and FIG. 44) shows elements that suggest: “dispensing the second product if the customer has accepted the offer. . . .”

Bernard proposes optional product dispensing modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of “*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*” (See Bernard (col. 4, ll. 32-34)).

As per claim 44, Malaspina (FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “A method comprising: receiving a selection of a first product from a vending machine . . . determining a second product . . . displaying an offer to for[sic] the second

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product instead of the first product . . . receiving an acceptance of the offer; and dispensing the second product.”

Malaspina (col. 1, ll. 55-60; FIG. 1; FIG. 2; FIG. 3; FIG. 5; the ABSTRACT; col. 2, ll. 44-67; col. 3, ll. 1-56; col. 4, ll. 33-45; and col. 6, ll. 15-17) shows elements that suggest: “determining a profit margin of the first product . . . determining a second product that has a profit margin greater than the profit margin of the first product. . . .”

Malaspina does not explicitly show: “receiving an acceptance of the offer; and dispensing the second product.”

Bernard (FIG. 24; FIG. 25; and FIG. 44) shows elements that suggest: “receiving an acceptance of the offer; and dispensing the second product.”

Bernard proposes optional product dispensing modifications that would have applied to the system described by Malaspina. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the modifications of Bernard with the system of Malaspina because such combination would have provided a means of “*browsing . . . to learn more about products which are popular or in great demand but about which the customer may not be aware.*” (See Bernard (col. 4, ll. 32-34)).

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RESPONSE TO ARGUMENTS—707.07(f)

5. The following is an except of MPEP 707.07(f): “Where the [A]pplicant traverses any rejection, the examiner should . . . take note of the [A]pplicant’s argument and answer the substance of it.”

Applicant's arguments filed 9/24/2001, “Amendment A” (paper #9) have been fully considered but they are not persuasive for the following reasons:

As per claims 34, 38 and 41, said claims appear to be dependent claims based on wording recited in said claims; for example:

Claim 34 recites the following language of dependence: “A storage device adapted for use with a microprocessor wherein a plurality of computer instructions defining the method of Claim 1 are encoded. . . .”

Claim 38 recites the following language of dependence: “A storage device adapted for use with a microprocessor wherein a plurality of computer instructions defining the method of claim 36 are encoded. . . .”

Claim 41 recites the following language of dependence: “(b) a microprocessor, said microprocessor controlling the distribution of said plurality product types by said vending machine according to the method of Claim 40. . . .”

As per claims 1-42, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re*

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Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is based on the knowledge generally available to one of ordinary skill in the art, as well as the cited suggestions found in the references themselves.

In response to Applicant's argument that the "two references are not analogous. . . ." it has been held that a prior art reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references are in the field of Applicant's endeavor and are both reasonably pertinent to the particular problem with which the Applicant is concerned.

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Furthermore, Applicant's arguments against the 35 U.S.C. §103(a) rejections fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

CONCLUSION

6. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

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Any response to this action may be sent via facsimile to either:

(703) 308-9051 (for formal communications marked EXPEDITED

PROCEDURE), or

(703) 308-5397 (for informal communications marked PROPOSED or DRAFT).

Hand delivered responses may be brought to:


Sixth floor Receptionist
Crystal Park II
2121 Crystal Drive
Arlington, Virginia.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Young who may be reached via telephone at (703) 305-3801. The examiner can normally be reached Monday through Friday between 8:30 A.M. and 5:00 P.M.

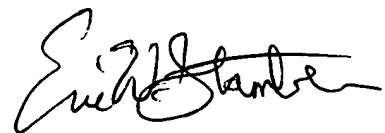
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, may be reached at (703) 305-8469.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

John L. Young
Patent Examiner



January 22, 2002



ERIC W. STAMBER
PRIMARY EXAMINER